IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.8269 OF 2005

M/s. Vinay Containers Services Pvt. Ltd.
and ors.
..Applicants.

Vs.

Y.R.Sanghrajka and anr.
..Respondents.

Mr.Prakash Naik for the Applicants.
Mr.Anis Mujawar for the Respondent No.1
Mr.A.M.Shringarpure, APP. for the State.

CORAM : R.S. MOHITE,J.
DATED : 20/3/2006.

P.C.

1. Heard both sides.

2. Rule.

3. By consent, rule made returnable forthwith.

4. This application impugns an order passed by the trial court rejecting an application made by the defence for issuance of summons to a proposed defence witness. The order issuing summons was passed by the Magistrate on 6.10.2005. Subsequently an application for adjournment was made and the same was also rejected by the Magistrate on the same day. The matter was carried in revision. The revision was

rejected on the ground that the order was inter locutory. The revisional court passed the order on 12.12.2005.

5. It is seen from the record that in this case trial was for an offence under Section 138 of the Negotiable Instruments Act. The statement of the accused under Section 313 of the Criminal Procedure Code was recorded on 21.9.2005. Thereafter, the applicants made an application for recall of the complainant and this application was allowed and the evidence of the complainant after recall was completed on 6.10.2005. It is on the same day an application was made on behalf of the applicants for summoning the defence witness. The record indicates that the reason given for rejecting the said application was that the accused had availed the opportunity by examining them after recording their statements under Section 313 of the Cr.P.C. and that the case was then fixed for final argument. The Magistrate found that the application is made to protract the proceeding and hence, rejected the same.

6. The revisional court also concluded that the application was made after recording 313 statement of the accused but found that the order was inter

locutory and hence, declined to entertain the revision.

7. It is clear from the record of the present case that the accused i.e. present applicants have a right to lead evidence under Section 254 of the Cr.P.C. The facts indicate that the application for leading defence evidence was made immediately after the evidence of the complainant, after recall was recorded. Merely asking for leading defence evidence cannot amount to delaying tactics. The applicants who are the accused must be given fair chance to produce such evidence as is relevant. It is seen from the application dated 6.10.2005 that the applicants want to examine bank officer to show the repayment of the liability, This is necessitated as they are required to rebut the presumption relating to consideration for issuance of the cheque. In the circumstances, the trail court ought not to have deprived them of this opportunity. Such an application for leading defence evidence could only have been after prosecution evidence was completed and in fact it appears that it is made on the same day. In the circumstances, rule is made absolute in terms of prayer clause (b). The parties submitted that the next date of the case is 27.3.2006. It is made clear that if the applicants

want to examine any other defence witness, they shall provide list of the witnesses on the next date and the application for issuance of summons to such witnesses will also specifically disclose the relevance of such witnesses. If any such application is made, the same may be decided on its own merits. It is however, made clear that the application for summoning bank officer made on 6.10.2005 is allowed and the trial court is directed to issue summons to this witness. Application stands disposed off.

(R. S. MOHITE, J.)

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